

BOARD OF APPEALS OF THE CITY OF BREWER

The purpose of this chapter is to establish a Board of Appeals for the City of Brewer under the Maine Constitution; Title 30-A M.R.S.A. Section 3001, Title 30-A M.R.S.A. Section 2691, and the Brewer City Charter.

ARTICLE 1

SECTION 100. BOARD OF APPEALS ESTABLISHED. A Board of Appeals is hereby established. The Board of Appeals shall consist of seven (7) members and up to three (3) alternate members, appointed by the City Council for the City of Brewer, and each member and alternate member shall serve for a term of three (3) years. All terms shall end on December 31st. Effective December 31, 2002, the terms of the present duly appointed and existing Board of Appeals members whose terms are scheduled to expire December 31, 2002 shall be extended to March 31, 2003, the terms of members and alternate members scheduled to expire December 31, 2003 shall be extended to March 31, 2004, and the terms of members and alternate members scheduled to expire December 31, 2004 shall be extended to March 31, 2005. Thereafter the terms of each member and alternate member shall expire on March 31st. (#1)

SECTION 101. PRESENT BOARD RE-ESTABLISHED. The present Zoning Board of Appeals for the City of Brewer as now constituted, shall constitute the Board of Appeals under this Ordinance, and each member thereof shall serve the remainder of his or her present term.

SECTION 102. APPOINTMENT. The City Council by a majority vote shall upon the expiration of each member's term or alternate member's term, appoint a member or alternate member for a three (3) year term, which shall end on March 31st. Upon the resignation of a member or alternate member, the Council shall appoint a member or alternate member as the case may be to serve that person's unexpired term. Members and alternate members shall continue in office until a successor is appointed and qualified. (#1)

SECTION 103. Neither a municipal officer nor the spouse of a municipal officer may be a member or alternate member of the Board.

SECTION 104. The Board will each year at its first meeting after April 1st elect a Chairman, Vice Chairman and a Secretary from its members. (#1)

SECTION 105. The Board shall determine by a majority vote whether or not a conflict of interest sufficient to disqualify a member from voting thereon after a challenge based on conflict of interest is made by a party to the hearing or a member of the Board.

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SECTION 106. In the event any member of the Board of Appeals is not present at a meeting of the Board, the Chairman, or in his or her absence the Vice Chairman, may appoint an alternate member to serve in the place of the absent member.

ARTICLE 2 PROCEDURE

SECTION. 200.1. The Chairman shall call meetings of the Board as required. The Chairman shall also call meetings of the Board when requested to do so by majority of the members or by the municipal officers. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least four (4) members. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board. In the absence of the Chairman, the Vice Chairman shall preside.

SECTION 200.2. The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the Secretary are deemed public, shall be filed in the Municipal Clerk's office and may be inspected at reasonable times.

SECTION 200.3. The Board may provide by rule, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chairman upon good cause shown.

SECTION 200.4. The Board may receive any oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

SECTION 200.5. The Board shall make its decision while the members who sat at the hearing are assembled and the decision shall be made within seven (7) days of the hearing, or the application shall be considered denied. All members of the Board, including the Chairman, present at any hearing or meeting shall vote on all matters which come before the Board unless:

- (a) the member has a conflict of interest, as provided by State law;
- (b) the member is disqualified by a majority of the other Board members present and voting for having a conflict of interest.

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SECTION 200.6. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed to or hand delivered to the petitioner, the petitioner's representative or agent, the Planning Board, agency or office, and the municipal officers within seven (7) days of each decision.

ARTICLE 3. GENERAL JURISDICTION, POWER, DUTIES AND OBLIGATIONS

SECTION 301. The Board shall have the power to hear any appeal by any person, affected directly or indirectly from any decision, order, rule or failure to act of the Code Enforcement Officer or any other official, person or Board having jurisdiction to issue an order in connection with the use and occupancy of land normally denominated zoning under the Brewer Land Use Code. The Board shall also have the power to hear appeals from a decision of the municipal officers from the denial, suspension or revocation of an Amusement License. The Board shall have the power to hear appeals from rulings or decisions of the Code Enforcement Officer relative to the Housing Code of the City. Finally, the Board shall also have the power to hear appeals as the fair hearing authority under Chapter 11 of the Brewer, Maine, Charter, Codes and Ordinances.

SECTION 302. The Board shall also have the power to exempt an owner from connecting to a public sewer as required by Chapter 31, Article 2, Section 204, of the City of Brewer Charter, Codes and Ordinances. Any person appealing from such order to the Board shall automatically be denominated a party. The Board upon finding that any other person, corporation or entity may be affected directly or indirectly by the decision to be made, shall allow such party upon proper application to become a party to the proceeding. Any party to a proceeding shall have the right to appeal as herein specified. The Board shall have the powers, duties and obligations given to it by the city ordinances and state statutes.

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SECTION 303. The Board shall not have the power to hear complaints or disputes of any City employee regarding the application, meaning or interpretation of the City's personnel policies or agreements governing work activity and conditions of employment for City employees.

SECTION 304. Any appeal to the Board of Appeals must be filed in writing within thirty (30) days after notice of the decision, interpretation, or refusal to act has been received by the party wishing to appeal. Notice shall be deemed to have been given the earliest of the following:

- (a) when the person or entity receives verbal notice;
- (b) when the person or entity, acting through its agent, receives written notice in hand;
- (c) when the notice is sent to the person or entity by First Class United States Mail, postage prepaid. Notice shall be deemed to have been given three (3) days after the notice is deposited in the mail.

SECTION 305. All appeals must be in writing and upon a form approved by the Code Enforcement Officer of the City of Brewer.

SECTION 306. All applications for appeal must be delivered to the Code Enforcement Officer of the City of Brewer. Within five (5) days after the receipt of the application by the Code Enforcement Officer, the application shall be forwarded by the Code Enforcement Officer to the Chairman of the Board of Appeals.

ARTICLE 4. POWERS IN DECIDING ANY APPEAL
FROM THE LAND USE CODE OF THE CITY OF BREWER

SECTION 400.1. The Board may interpret the provisions of the Ordinance which are called into question.

SECTION 400.2. The Board may grant a variance only when strict application of the zoning provisions of the Land Use Code, or the provisions thereof, to the petitioner and his or her property would cause undue hardship, as the same may be permitted by Maine law.

SECTION 400.3. The Board shall have the powers, duties and obligations given to it under the Land Use Code of the City of Brewer.

**ARTICLE 5. POWERS IN DECIDING ANY APPEAL FROM A DENIAL,
SUSPENSION OR REVOCATION OF AN AMUSEMENT LICENSE**

SECTION 500.1. The Board may grant or reinstate the license if it finds that the permitted activities would not constitute a detriment to the public health, safety and welfare, or that the denial, revocation or suspension was arbitrary and capricious.

**ARTICLE 6. POWERS IN DECIDING AN APPEAL
FROM THE HOUSING CODE OF THE CITY OF BREWER**

SECTION 600.1. Any owner or person who is aggrieved with the ruling or decision of the Code Enforcement Officer in any matter relative to the interpretation or enforcement of any of the provisions of the Housing Code Ordinance may appeal the decision or interpretation to the Board of Appeals. The appeal must be filed within thirty (30) days of the date of the rendition of the decision or interpretation. The appeal shall be filed with the Code Enforcement Officer in writing and shall be to the Board of Appeals.

The Board may affirm or modify the decision of the Code Enforcement Officer in accordance with the terms of the Housing Code Ordinance.

The Board may reverse the decision of the Code Enforcement Officer and permit exceptions to, or variations from, the specific terms of this ordinance in such cases where the enforcement of the provisions of this ordinance may result in undue hardship, subject always to the rule that the Board of Appeals shall give due consideration to the purposes of the Housing Code Ordinance in promoting health, safety and general welfare. An appeal may be taken from the decision of the Board to Superior Court, as provided by State Law.

**ARTICLE 7. POWERS IN EXEMPTING AN OWNER FROM BEING REQUIRED TO
CONNECT INTO A PUBLIC SEWER IN ACCORDANCE WITH CHAPTER 31,
ARTICLE 2, SECTION 204, AND CHAPTER 31, ARTICLE 3, SECTION 304,
OF THE CITY OF BREWER CHARTER, CODES AND ORDINANCES.**

SECTION 700.1. The Board may exempt an owner from being required to connect to a public sewer as mandated in Chapter 31, Article 2, Section 204, and Chapter 31, Article 3, Section 304 of the City of Brewer Charter, Codes and Ordinances, if it finds any of the following elements present:

- (a) The owner has a state approved septic system which is

functioning properly.

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- (b) The owner cannot connect to public sewer without a pumping station and has a state approved properly functioning septic system.
- (c) The owner cannot connect to the public sewer without being put to a great deal of expense, due to the topography, soil conditions and use of the property, and has a state approved properly function septic system.

SECTION 700.2. In the event an owner is exempted by the Board in accordance with Section 700.1 of this Ordinance, such exemption shall apply so long as the owner or his successor in title is able to operate a state approved properly functioning septic system in existence at the time the exemption is granted. In the event the said septic system becomes in need of repair or replacement or alterations must be made, the building shall be connected to the public sewer in accordance with Article 2, Section 204, and Article 3, Section 304 of Chapter 31 of the Brewer Charter, Codes and Ordinances.

**ARTICLE 8. AUTHORITY UNDER CHAPTER 11 OF THE
CITY OF BREWER CHARTER, CODES AND ORDINANCES**

SECTION 801. The Board shall have the authority to hear appeals under Chapter 11 of the City of Brewer Charter, Codes and Ordinances as the fair hearing authority.

SECTION 802. The Board shall have such power, duty and authority as is given to it under Chapter 11 of the City of Brewer Charter, Codes and Ordinances.

SECTION 803. The procedure set forth under Chapter 11 of the City of Brewer Charter, Codes and Ordinances shall control all hearings and actions of the Board of Appeals in hearing appeals under Chapter 11.

ARTICLE 9. PARTIES

SECTION 901. The Board shall reasonably notify of any hearing, the petitioner, any person who shall have asked to be made a party, all abutting land owners, and the municipal officers. Any person who demonstrates to the satisfaction of the Board that he or she has an interest in the matter shall be made a party to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

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ARTICLE 10. APPEALS

SECTION 1001 Any person who was party to the action before the Board of Appeals may take his or her appeal from the decision of the Board of Appeals to the Penobscot County Superior Court in accordance with the laws of the State of Maine and Maine Rules of Civil Procedure, Rule 80-B.

SECTION. 1100. RE-APPLICATION FOR APPEAL

SECTION 1101. No application for an appeal to the Board of Appeals shall be made upon the same subject matter within six (6) months from any denied application.

END OF CHAPTER NOTATIONS - CHAPTER 34

1. enacted 12/10/02, effective 12/15/02 (2002-C065)